

provided that if the 2 GHz incumbent can demonstrate within one year after moving to new frequencies or facilities that those facilities are not comparable in service to the previously employed 2 GHz microwave link, the new technology proponent must remedy those deficiencies or pay the cost of relocating the POFS licensee back to the former frequency assignment. This should provide reasonable assurance that should unanticipated problems arise, relocated 2 GHz licensees will be able to redress the situation.

**D. Arbitration and/or Mediation are Preferred for
Dispute Resolution**

25. If a sufficient voluntary transition period is allowed and incumbents control the replacement process, disputes will be minimized. However, in the event that disputes do arise, a mechanism for resolving disagreements should be selected which allows maximum flexibility for the parties to work out their differences. Arbitration may provide such a mechanism although it may be difficult to obtain arbitrators with sufficient expertise to handle the issues involved. Mediation may provide a more flexible approach. Provided that the mechanism chosen includes personnel with competence to pass on such issues, and the burden of proving comparability falls on the new technology

service provider, there should be adequate assurance that disputes can be fairly resolved.

26. The use of a negotiated rule making for determining definitions of comparability may be of limited value. While API believes that there will be objective parameters by which comparability can be determined, what overall factors are most important in each licensee's system will vary from system to system. A licensee that is being forced to accept substitute facilities must be satisfied that the replacement facilities are comparable and will provide service equal to that which it is able to obtain on the existing 2 GHz system. Placing the acquisition of equipment and system engineering and construction in the hands of the existing licensee will contribute to ensuring that the licensee is satisfied that the new facilities which he is acquiring are comparable to those being lost. As long as the license is assured that it will not have to abandon its current system until the replacement facilities have been adequately tested, and given the fact that licensees will have a one-year grace period in which to evaluate the performance of the system, there should be adequate safeguards for the licensee and the new technology service provider to come to terms on the adequacy of comparable facilities. With the back-up of a dispute resolution

mechanism for what API believes will be few instances of disputes, the FCC should not have to engage in a rule making to further refine the definition of comparability.

E. Fixed Microwave Licensing Policy

27. API is disappointed with the Commission's decision to redefine the types of modifications that can be made to existing 2 GHz systems without a licensee losing its primary status. The Commission has now announced that only "minor" modifications will be given co-primary status in the band. These minor modifications will include changes in antenna azimuth, antenna beamwidth, antenna height, authorized power, channel loading, emission, station location, changes in ownership or control, reductions in authorized frequencies, or addition of frequencies not in the 2 GHz band. There is no indication that necessary system expansion or modification which would encompass adding new paths will be permitted on a co-primary basis. The Commission previously announced that new 2 GHz paths would be permitted to be added to existing systems on a case-by-case basis, but that totally new stand-alone 2 GHz microwave systems could only be licensed on a secondary basis. Now the agency has indicated that any new paths added to existing systems will only be allowed on a

secondary basis. This may considerably hamper existing 2 GHz microwave users who will require new paths to meet myriad circumstances. API takes strong exception to the Commission's intimation that it cannot permit this kind of system modification because of the fear that entities will attempt to license 2 GHz microwave spectrum so that they can later be compensated by a new technology service provider. The Commission should not hamstring existing 2 GHz microwave users with legitimate communications requirements because of unfounded fears of speculation. API is unaware of any evidence of speculation or any history of speculation by single-user licensees in the private microwave bands. Accordingly, the Commission has no basis on which to conclude that this is a realistic possibility.

F. API Supports the Commission's Efforts to Make Spectrum from the Federal Government 2 GHz Band Available to Displaced Incumbent POFS Licensees

28. API agrees with the Commission that spectrum in the 1710-1850 MHz and 2220-2290 MHz federal government bands provide the long-haul propagation characteristics necessary to accommodate POFS links which cannot adequately be replaced by alternative media or higher-range microwave spectrum. API is pleased to note that tentative discussions have taken place between the Commission and the National

Telecommunications and Information Administration (NTIA) to assist in evaluating the feasibility of reaccommodation of displaced users in the federal government 2 GHz band.^{11/} Nonetheless, NTIA clearly has expressed reservations concerning use of the federal 2 GHz bands to accommodate displaced POFS licensees.^{12/} API is therefore concerned that, while legitimately seeking to protect federal government 2 GHz operations, NTIA may inadvertently erect barriers to POFS licensee access to otherwise unused government spectrum.

29. API notes that, in recent appropriation legislation for NTIA, Congress stipulated that NTIA must adopt procedures by which unused federal government spectrum could be accessed by private users.^{13/} Moreover, the legislation requires that NTIA develop a procedure that permits private parties to make applications for access to government spectrum including a public review mechanism by which NTIA would expeditiously grant or deny such

^{11/} 3rd NPRM at ¶ 36.

^{12/} See: "Federal Spectrum Usage of the 1710-1850 MHz and 2200-2290 MHz NTIA Report 92-285, (March 1992). See also: Letter of May 4, 1992, from Thomas J. Sugrue, Acting Assistant Secretary for Communications and Information, U.S. Dept. of Commerce, to Alfred C. Sikes, FCC Chairman.

^{13/} Telecommunications Authorization Act of 1992, Pub. L. 102-538, 106 Stat. 3533 (1992).

applications. API urges the Commission to continue to work with NTIA to promptly implement the congressionally-mandated application procedures to facilitate access to government spectrum by displaced POFS licensees.

G. The Commission Must Ensure that the Operation of Emerging Technology Systems Does Not Create Objectionable Interference to Incumbent POFS Licensees

30. The Commission has noted that the new technologies which ultimately may be accommodated in the reallocated 2 GHz spectrum have not fully been identified. The Commission has further asserted that no present need exists to identify specific services which will be authorized to operate in the spectrum being reallocated prior to making the general reallocation. The Commission has also observed that while POFS/PCS interference criteria are currently being developed in the Docket No. 90-314 proceeding, interference criteria for future sharing between incumbents and developing technologies should not be developed until technical configurations of new technologies are further determined.^{14/}

^{14/} 3rd NPRM at ¶ 29.

31. API is concerned that the Commission's position will enhance the possibility of future objectionable interference to existing POFS operations. While API understands that it is difficult to accurately project which new technologies will be located in a particular spectrum range, API urges the Commission to take steps to fully apprise existing licensees as far in advance as possible of any plan to locate a particular new technology or service in a specific spectrum location. Through an early notice policy, incumbent licensees will be better positioned to plan and work with emerging technology proponents to forestall interference problems which may otherwise develop.

32. Further, API urges the Commission to establish a minimum interference threshold criteria for all "new services" regardless of their technical configuration. API has urged that the Bulletin 10E standard be used as a minimum interference threshold and has provided the Commission (in Comments in Docket No. 90-314) with a specific interference criteria plan for PCS operations. API asserts that the same Bulletin 10E standard should be used as a minimum acceptable interference threshold to maintain the adequacy of critical POFS communications services regardless of the technical configuration of any new services authorized to operate in the "emerging technology"

spectrum reserve. The Commission is also urged to establish a policy by which new technology proponents, regardless of the configuration of their systems, must maintain compliance with the 10E minimum interference threshold to any potential "victim" microwave receivers within a proposed service area. POFS operators may then be assured that, irrespective of who their spectrum neighbors may be or how those neighbors may configure telecommunications systems of the future, the critical POFS operations may reasonably be interference-free until such time as final migration to other frequencies or alternative technologies may be made.

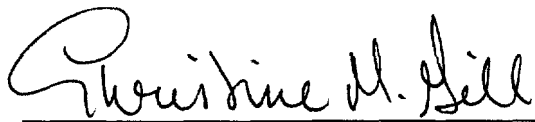
IV. CONCLUSION

33. The Commission has made several proposals in this proceeding which will help to ensure a careful transition when POFS licensees are forced to move from the 2 GHz band. With full involvement of POFS licensees in the procurement and implementation of replacement facilities, full compensation for the cost of replacement facilities, the transition should be relatively smooth. A five year period for voluntary negotiation should be enacted to allow parties to work out transition issues. The Commission should press for access by displaced POFS users to Government spectrum in the 2 GHz range. Finally Bulletin 10E Standards must be

employed as a minimum criteria to protect existing 2 GHz
Private Operational-Fixed Microwave Systems.

Respectfully submitted,

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Dated: January 13, 1993

CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing Comments of the American Petroleum Institute has been served this 13th day of January, 1993 via hand delivery to the following:

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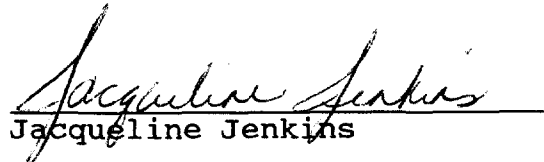
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